Supreme Court, U.S.
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No. 98-1584

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1998

MICHAEL D. IVESTER,
Petitioner,

vs.

STATE OF MISSOURI,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

Respectfully submitted,

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STATEMENT OF THE CASE

Petitioner, Michael D. Ivester, was convicted of forcible rape, § 566.030, RSMo 1994, forcible sodomy, § 566.060, RSMo 1994, and felonious restraint, § 565.120, RSMo 1994, for which he was sentenced to two terms of life imprisonment and one term of seven years, all to be served consecutively. The facts at trial established that on December 3, 1996, at approximately 6:00 p.m., petitioner returned home to his wife, Darla Ivester, visibly intoxicated. Petitioner went on a rampage which lasted six hours and included throwing pots and pans, chasing Darla Ivester with a broom and attempting to stab her with a fork. All of this took place in the presence of petitioner's nine year old son, Steven. Petitioner told Steven he was going to kill his mother. Darla and Steven took refuge in the childrens' room while petitioner proceeded to destroy the family's belongings. At one point Steven put his arms around his mother to prevent petitioner from striking her. Later that night, petitioner was able to separate Darla from the children. At that point he threatened to kill her and proceeded to rape her and have oral sex with her against her will. Darla made several attempts to escape, but petitioner restrained her. Darla eventually escaped the next morning by telling petitioner she was going to get milk for the kids. Instead, Darla went to the police station.

Petitioner was arrested on December 4, 1993. On August 16, 1995, petitioner filed a request for a speedy trial. On March 12, 1996, petitioner was brought to trial. At the conclusion of the evidence Appellant was found guilty on all three counts.

Appellant filed notice of direct appeal on December 10, 1997. Appellant alleged, among other matters, that his constitutional rights were infringed by the twenty-seven month delay between his arrest and the beginning of trial.

The Missouri Court of Appeals, Eastern District, issued an opinion affirming Appellant's convictions. State v. Ivester, 978 S.W.2d 762 (Mo.App. E.D. 1998). The case was later transferred to the Missouri Supreme Court by the Missouri Court of Appeals (Petition, Appendix at 3). Arguments were held before the Missouri Supreme Court, but after argument the case was transferred back to the Court of Appeals (Petition, Appendix at 2) and the Missouri Court of Appeals reinstated its opinion (Petition, Appendix at 1).

ARGUMENT

I.

In his petition for a writ of certiorari, petitioner first claims that this Court should grant a writ of certiorari to determine whether a twenty-seven month delay between arrest and trial triggers a presumption of "actual prejudice" (Petition at 11). Petitioner alleges that the opinion of the Missouri Court of Appeals, Eastern District, conflicts with this court's precedent in Doggett v. United States, 505 U.S. 645, 112 S.Ct. 2686 (1992). This question is without merit because the Missouri Court of Appeals correctly applied Doggett to the facts of this case.

The Missouri Court of Appeals, Eastern District, analyzed petitioner's claim under the balancing test established by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972). That process requires a weighing of four factors: (1) length of delay; (2) reason for the delay; (3) defendant's assertion of his right to a speedy trial; and (4) prejudice to the defendant.

In so balancing, the Missouri Court of Appeals weighed the first three factors in favor of petitioner. Ivester at 764-766. The fourth factor, however, was weighed in favor of the state since there was no indication that petitioner was prejudiced by the delay between his arrest and his trial. Id. at 766-768. The Missouri Court of Appeals analyzed this factor in light of this court's precedent in Doggett v. United States, 505 U.S. 657, 112 S.Ct. 2686 (1992). Ivester at 766. The Missouri court conceded that under Doggett detailed proof of prejudice was not required. Id. The Missouri court also assumed, for the sake of petitioner's appeal, that an excessive delay could result in a presumption of actual

prejudice.[1] Id. The Missouri Court went on to find that this presumed prejudice was rebutted by petitioner's statements at sentencing in which he 1) said he had no excuses for his actions, 2) said that there was no reason for him to force his will on anyone, 3) indicated that he was thankful for the nearly three years he had spent incarcerated because it had enabled him to rehabilitate himself. Id. at 768. Based on petitioner's statements, there is no indication that his defense was in any way prejudiced by the delay.

Doggett specifically allows for the presumption of prejudice to be rebutted. Doggett 112 S.Ct. at 2694. The Missouri Court of Appeals followed Doggett when it found that, to the extent there was a presumption of prejudice, it was rebutted by the absence of any evidence that petitioner's defense was prejudiced.

Petitioner's first question is without merit, because the Missouri Court of Appeals presumed prejudice existed due to the delay but found that it was rebutted. This case presents no question that is worthy of the review of this Court.

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[1] Doggett does indicate that an excessive delay may result in a presumption of some actual prejudice. In order for relief to be granted solely on the basis of this presumed prejudice, however, it must last longer than if the defendant has some evidence of particularized trial prejudice. Id. at 2694. In this case, although the Missouri Court of Appeals gave petitioner the benefit of the doubt and presumed prejudice, the court was not necessarily required to since there was no indication, despite the delay, that the prosecutors were intentionally delaying the trial. See Robinson v. Whitley, 2 F.3rd 562, 570 (5th Cir. 1993).

II.

Petitioner next claims that this Court should grant a writ of certiorari to determine whether the appellate court may consider events occurring after the denial of Appellant's motion for speedy trial in determining whether the presumption of prejudice was rebutted (Petition at 13).[2] Petitioner alleges that the opinion of the Missouri Court of Appeals, Eastern District, conflicts with this court's precedent in Doggett v. United States, 505 U.S. 645, 112 S.Ct. 2686 (1992). This question is without merit because the opinion in this case in no way conflicts with Doggett and is, in fact, consistent with precedent established in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972).

The dissent to the Missouri Court of Appeals opinion, filed by Judge Karohl, suggests that the majority opinion wrongly considered facts occurring after the denial of the speedy trial motion in deciding whether Appellant had been prejudiced. Ivester at 768. Petitioner relied on this dissent in his motion for rehearing before the Missouri Court of Appeals and in his argument before the Missouri Supreme Court. This argument conflicts with established law.

The most important single factor under Barker is how the defendant's ability to put on a defense was impaired by the delay before trial. When reviewing the denial of a motion to dismiss, therefore, appellate courts by necessity

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[2] It is certainly questionable whether, in this case, the Missouri Court of Appeals should have found that a presumption of prejudice existed. Since there was no reason to believe that the government prosecutors intentionally delayed the trial, petitioner should have been required to show "specific prejudice to the defense." Robinson v. Whitley, 2 F.3rd 562, 570 (5th Cir. 1993). The Missouri Court of Appeals opinion gave petitioner the benefit of the doubt in this issue and required the state to rebut the presumption of prejudice.

examine what type of defense was offered at trial to determine if the defendant's ability to defend himself was impaired. For example, if a defendant, prior to trial, files a motion to dismiss because delay has caused him to forget the names of defense witnesses, but at trial the defendant calls multiple witnesses in his defense, the appellate court would surely consider that when determining whether his ability to defend himself had been impaired. Petitioner's argument that the appellate court should not consider events occurring after the denial of his motion defies logic and practice.

Neither Barker v. Wingo nor Doggett v. United States, state that appellate courts are prohibited from considering events occurring after the denial of a motion to dismiss in deciding whether a defendant was prejudiced. In fact, in Barker, the very case which established current speedy trial analysis, the United States Supreme Court referred to the **trial record** when discussing whether the defendant had been prejudiced. Barker 92 S.Ct. at 2194. This court noted, "the trial transcript indicates only two very minor lapses of memory - one on the part of a prosecution witness - which were in no way significant to the outcome." Id.

Appellant's reliance on Doggett is misplaced. Doggett only states that the government could not use the fact that the defendant ultimately plead guilty in that case to defeat his speedy trial claim. That is only a reflection of common sense, however, since in Doggett the guilty plea specifically provided that the defendant reserved the right to appeal the denial of his speedy trial claim. Id. at 2694. By contrast, in the present case, the Missouri Court of Appeals used Appellant's sworn statements at the sentencing hearing which indicated that he was not prejudiced by the pretrial delay.

The analysis of the Missouri Court of Appeals, Eastern District, was consistent with United States Supreme

Court precedent in Barker and Doggett. This case presents no question that is worthy of the review of this Court.

CONCLUSION

In view of the foregoing, respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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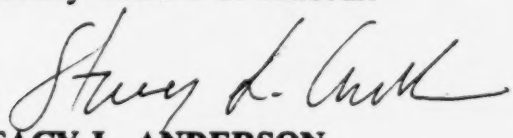

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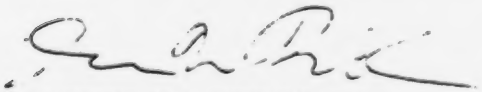

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